



MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR

**REVIEW OF
USER ACCESS PROGRAM (UAP) COMPLIANCE**

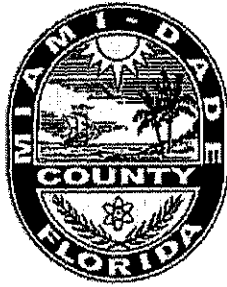
Project Number 05-13-35-06
August 9, 2005

**Noel Aranha, CPA
Auditor-In-Charge**

**Aurelio Alonso, CPA
Audit Manager**

**Charles Anderson, CPA
Commission Auditor**

**111 NW First Street, Suite 1030
Miami, Florida 33128
305-375-4354**



**MEMORANDUM
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County
Commissioners

DATE: August 9, 2005

FROM: Charles Anderson, CPA

A handwritten signature in black ink, appearing to read "Charles Anderson", is written over the printed name.

SUBJECT: Review of User
Access Program
Compliance

We have conducted a review of the County's User Access Program, and we submit this report, which contains findings, recommendations, and management responses. Management substantially concurred with our recommendations.

We thank employees of the Department of Procurement Management for their cooperation and input throughout the review. Please let us know if you need further information.

CA/na

Cc: Honorable Carlos Alvarez, Mayor
George Burgess, County Manager
Chris Mazzella, Inspector General
Alina Hudak, Assistant County Manager
Cathy Jackson, Audit Management Services
Miriam Singer, Director of Procurement Management

TABLE OF CONTENTS

I.	OBJECTIVE AND SCOPE	1
II.	METHODOLOGY.....	1
III.	BACKGROUND	1
IV.	EXECUTIVE SUMMARY.....	2
V.	FINDINGS AND RECOMMENDATIONS.....	3
	1) UAP CONTROL ENVIRONMENT	3
	2) REVIEW OF UAP PROCEDURES.....	4
	3) FIELD WORK.....	5
	4) RECOMMENDATIONS.....	5
	5) ADDITIONAL COMMENTS.....	9

REVIEW OF USER ACCESS PROGRAM COMPLIANCE

I. OBJECTIVE AND SCOPE

This review of the User Access Program (UAP) administered by the Miami-Dade County, Department of Procurement Management (DPM) was conducted in accordance with the FY 2004-05 Work Plan approved by the Miami-Dade Board of County Commissioners on January 20, 2005.

The objective of our review was to determine if the County is receiving the intended full economic benefit from the User Access Program as to:

- ◆ Qualified covered purchases by the county.
- ◆ Qualified covered purchases by other municipalities using County contracts.
- ◆ Qualified covered purchases by other not-for-profit entities using County contracts.

II. METHODOLOGY

This review was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing (2004)* promulgated by the Institute of Internal Auditors, *Government Auditing Standards (2003)* issued by the United States Government Accountability Office, state statutes, county ordinances and departmental policies and procedures as appropriate.

To evaluate if the County was receiving the full economic benefit from the UAP Program and determine if the program was implemented effectively, we reviewed the following:

- ◆ The control environment.
- ◆ The UAP procedures.
- ◆ UAP compliance: We selected vendors and participating municipalities to test compliance with the UAP ordinance.

III. BACKGROUND

The User Access Program (UAP) was approved by the Board of County Commissioners (BCC) under Miami-Dade County Budget Ordinance No. 03 -192 and became effective on October 1, 2003. The program allows for a two percent deduction from all vendor invoices (excluding any additional freight charges) for newly established contracts as well as negotiated modifications of existing contracts, including renewals. The UAP applies to:

one time purchases, term contracts, blanket purchase orders, pool contracts and contracts of other entities accessed by DPM such as the State of Florida. The following contracts are excluded: small purchase orders, federal funds, employee benefit contracts, revenue contracts and contracts with BCC established rates (such as towing contracts).

Agencies outside the County government wishing to access DPM established contracts are required to complete the Miami-Dade County Joint Purchase and Entity Revenue Sharing Agreement (Agreement). Upon approval from the County, agencies outside the County government are required to deduct two percent from all applicable vendors' invoices and remit 75% of that rebate to the County while retaining 25% of the rebate to offset their costs for administering the invoice deduction. Furthermore, agencies outside the County government that have signed a UAP Agreement are invited to become 'Active Participants' by being named in the contract(s).

The previous surcharge program legislation, which expired in April, 2003, allowed for DPM-issued contracts to include the two percent access fee only on purchases by non-County governmental or quasi-governmental agencies accessing the contracts. The fee was collected by DPM directly from the vendor.

According to the County Manager's Second Budget Hearing memo issued in September 2003 to the Board of County Commissioners, the original revenue projection for Fiscal Year 2003-2004 was \$1.8 million. However, the Department of Procurement Management (DPM) was advised that the fee could not be applied to any Aviation Department procurements due to Federal Aviation Administration regulations. Also, the Federal Transit Administration informed DPM that the UAP cannot be applied to any contract where federal funds were used. The State of Florida advised the County that the UAP fee cannot apply to Law Enforcement Trust Fund proceeds from the Miami-Dade Police Department. According to DPM, even the administration portion of a federal grant could not be used because the UAP was not included in the administration portion of the grant request and because County departments were making use of all the administration portion of the grant. For example, if only five percent of the administration funding was used, the remaining would be used for the actual project. The County had estimated revenues to be \$838,000 for the first fiscal year ended September 30, 2004, a reduction of approximately \$1 million from the original projection because of the aforementioned exemptions. Actual collections at the end of FY 2003-04 were \$972,749, surpassing the end of year projection by \$134,749.

IV. EXECUTIVE SUMMARY

Within the limits of our review and except as noted in the findings and recommendations listed below, we found that DPM has implemented the UAP program as established by Budget Ordinance No. 03-192 dated September 17, 2003.

During the first year of the UAP implementation, emphasis was placed on educating County departments, vendors and outside agencies; modifying computer systems to automatically collect the fee for County purchases; and manually billing vendors for UAP fees pending the completion of the system modifications. These efforts were successful as

demonstrated by the collections of \$972,749 during the first year. During the second year of implementation, special emphasis is being placed on increasing the participation of non-County entities by implementing strategies to facilitate and encourage participation. At the time of this review, many strategies were already being used. A discussion of preliminary review findings was conducted with DPM's Director of Administration and Fiscal Division.

V. FINDINGS AND RECOMMENDATIONS

1) UAP CONTROL ENVIRONMENT

The UAP contract report for the period October 1, 2003 through March 3, 2004 was obtained from DPM. This report lists all contracts where the UAP was applied. There were 1,351 contracts, including Options to Renew (OTRs) with a contract value of \$1.6 billion. The average value of a contract was \$ 1.2 million and around \$325 million per year over 5 years. Included on the report were 206 expired contracts totaling \$460 million and 121 one -time purchases with a value of \$14 million, leaving a balance of 1,024 contracts valued at \$1.1 billion. The contract period included contracts with a term of up to seven (7) years. During the 1st and 2nd quarters of FY 2003-04, DPM included the UAP language in 100% of eligible contracts and OTRs issued. During the 3rd and 4th quarters, the percentage of inclusion of the UAP language was 99.7%.

Our review of the UAP indicated that third parties and the County vendors could potentially circumvent the UAP but should be deterred for the following reasons:

- a) The users of the UAP could jeopardize their contract and future business with the County and also be subject to punitive/remedial damages at law if a collusion-accomplice relationship to wrong doing was established.
- b) The participating municipalities, quasi-governmental and not-for-profit entities must comply with their own bid/procurement process, which could only be bypassed by disclosing the Joint Purchase and Entity Revenue Sharing Agreement (or equivalent) with the County. Also, these users would have to incur the time and cost of the bid/procurement process mandated by their governing body.

The State of Florida has a similar program which allows for a one percent Transaction Fee. Vendors pay a one percent fee for using the State website for procurement. In the State's experience, the vendors increase prices to offset the one percent surcharge and dislike the bureaucracy burden imposed on them by the program. The vendors do not report outside purchases and the State has no visibility into Third Party Buyers.

2) REVIEW OF UAP PROCEDURES

- a) All requests for quotation (RFQ) have language included in them that the quotations are subject to the County User Access Program. Existing renewable contracts have the County User Access clause included in the contracts.
- b) DPM has amended the ADPICS program to automatically deduct the two percent UAP fee from vendor invoices.
- c) Letters were sent to municipalities, quasi-governmental and not-for-profit entities explaining the "Miami-Dade County Joint Purchase and Entity Revenue Sharing Agreement" (Agreement). Five municipalities and one quasi governmental entity (Participants) have signed up to participate in this Agreement. Only one municipality, The City of North Miami, reported and paid a UAP fee of \$2,897.66 for the calendar year 2004. The remaining Participants did not send any written reports as required by the Agreement. According to the accountant in-charge of UAP, the Administrative & Fiscal Division Director of DPM called the Participants and was told they had nothing to report.
- d) As of September 30, 2004, DPM had recorded UAP revenues of \$972,749 from County departmental purchases.
- e) As of April 1, 2005, the County recorded \$1,698,323 in UAP revenues from procurements within the County departments. DPM projections of UAP revenue from County departments for the fiscal year ending September 30, 2005 are estimated at \$3,624,044.
- f) From an analysis conducted by DPM of contracts in place prior to the implementation of the UAP, the total purchases during the fiscal year ended September 30, 2004 were \$290,895,387. If the UAP had been in place, these payments would have provided UAP revenue of \$5,817,908. This amount is comparable to an approximate \$6 million computed at two percent based on the "Materials and Supplies" in the County's Comprehensive Annual Financial Report (CAFR) of \$300,937,000 for the fiscal year ended September 30, 2003. DPM had estimated UAP revenue of \$5,221,758 for fiscal year ending September 30, 2006. This projection was based on actual UAP eligible contracts that would be renewed and the continuation of existing UAP contracts.
- g) DPM assigned specific tasks to personnel within its department to implement the UAP. The task of applying the UAP to eligible contracts is assigned to Procurement Officers and Agents in the operating divisions. The fiscal responsibilities are assigned to the staff in the Fiscal Unit. At present, there is no employee solely dedicated to the promotion of the County's UAP. These duties and follow-up with the outside entities are shared by management staff and staff within the Fiscal Unit. As per the Fiscal Manager, there was an employee (Business Outreach Coordinator) whose job duties included

promoting such a program but this position was eliminated due to budget cuts in FY 2004-05.

3) FIELD WORK

- a) We selected three contracts, valued in excess of \$10 million each, to determine compliance with the requirements stipulated by the implementation of the UAP. Each of these contracts was awarded prior to the implementation of the UAP, and they were in Option to Renew (OTR) periods. Two of the three contracts reflected that the UAP fee was offset, with the DPM's consent, in order to accommodate the vendors by permitting a two percent reduction of the discount or increase in price originally submitted. Further discussion with DPM staff indicated that, during the implementation phase, approximately five percent of the vendors refused to sign up for the UAP when the OTR was sent. In one example, 78 vendors were sent the UAP clause with the OTR, and only 35 vendors accepted the UAP clause. In other instances where the market research indicated a substantial increase in prices, some vendors refused to accept the UAP fee. In pool cases, to treat vendors named in the contract equally, all prices were increased, or the normal discount allowed to the County was reduced, to make up the two percent UAP fee. All of the aforementioned accommodations were noted during the first cycle in the transition period.
- b) We selected the five most prominent and suitable vendors, according to DPM staff, to test their compliance with the UAP. A vendor contract was considered prominent if the goods and services were high volume and price coupled with a wide range of departmental usage culminated in a large dollar value contract. A vendor contract was deemed suitable, for UAP purposes, if it had a high degree of acceptability/utility regarding a prospective participant. A good example of both prominent and suitable is the furniture and fixtures contract, which happens to be a "pool" contract; consisting of a group of vendors. We requested a customer list so we could match with the Participant's list of vendors. Accordingly, we contacted the Participant's and obtained a vendor list to complete the two-way match.
- c) Our examination of one of the County vendor's accounting records indicated that the City of Miami Gardens was using the Broward Sheriff's Office contract for printer toner supplies. Also, the examination of one of the County vendor's accounting records indicated that the City of Miami had their own contract for fleet vehicles.

4) RECOMMENDATIONS

Since implementing the UAP, DPM has corresponded with over 60 outside agencies, including 35 local municipalities, to partner with Miami -Dade County through the UAP Joint Purchase and Entity Revenue Sharing Agreement.

Additionally, all Miami-Dade and Broward County agencies were invited to a forum conducted by DPM to promote the UAP. At the time of this review, six agencies had signed on as participants. Most could benefit from the UAP. To maximize the economic benefits of this program, the County should more aggressively market this to the municipalities, quasi-governmental and not-for-profit entities on DPM's distribution list. In order to achieve this objective, strengthen the anti-circumvention controls, and implement newly suggested procedures, we recommend the following:

- a) Continue to conduct meetings with each existing and potential Participant to explore opportunities and remedy obstacles in order to include them as Active Participants in RFP (Request for Proposal), ITB (Invitation to Bid), and RFQ (Request for Quote) processes. DPM's proposal, to bill and collect the full two percent fee directly from vendors for those entities that cannot collect the UAP fee, should be implemented.

Department of Procurement Management Response: *During the first year of implementation of the UAP, DPM staff communicated with over 60 agencies to introduce the UAP, share its many benefits, and encourage the agencies to sign the UAP Joint Purchase and Entity Revenue Sharing Agreement (UAP Agreement). Additionally, representatives from Miami-Dade and Broward County municipalities were invited to a workshop to promote the UAP and encourage participation. DPM continues to identify additional jurisdictions for participation in the UAP. We are focusing our recruitment on an additional 57 agencies this year. DPM staff continues to reach out to each of these agencies to secure UAP Agreements. Meetings are being conducted in an effort to increase participation and further evaluate strategies to simplify payment processes that may make the UAP more user-friendly for other jurisdictions.*

The UAP, as approved by the Board of County Commissioners (BCC) in the FY 2003-04 Budget Ordinance, requires non-county agencies to deduct a two percent fee from vendor invoices, and to remit 75% of this fee to DPM. The agency retains 25% of this fee. Many agencies we have met with indicate their inability to process the payments to Miami-Dade County (County) due to limitations with their financial systems. Their inability to deduct UAP fees is a limiting factor to their participation in the program. In an effort to address this issue and to maximize UAP revenues through increased participation, staff has recommended a modification to the current procedures as part of the FY 2005-06 budget process. If approved by the Board, staff will be able to collect the two percent UAP fee directly from vendors.

- b) Follow-up on communications with Participants when contracts come up for renewal, inviting them to be Active Participants. "Active" participation means that prior to the County's release of a contract solicitation for bidding, entities will be asked for their projected purchasing need. Entities in "Active" status will be specifically named in the contract, and vendor(s) will be required to fill purchase orders for these entities at the Miami-Dade County contract price and terms. If the entity elects not to be an "Active" Participant, the contracted vendor(s) shall be free to decline the order. Currently, entities on DPM's

distribution list are forwarded all award sheets with pricing and vendor information.

Department of Procurement Management Response: *After a solicitation has been awarded, DPM forwards an award sheet to each non-county agency included in the DPM database. UAP partner agencies can access a contract to purchase goods and services from vendors at the same pricing as the County. Contracts awarded with the UAP provision require that the agency sign the UAP Agreement prior to accessing a contract. This requirement is noted in the DPM boilerplate.*

The UAP allows partner agencies to be noted as participating purchasers within County contracts. Agencies are to be specifically named in the contract with an allocation in the same manner as County departments. This feature has not been implemented as current systems cannot support this process. A technology solution recommended for implementation in FY 2005-06 includes numerous departmental process improvements and the ability to include UAP partners within County contracts.

We anticipate that additional purchasing volume and authority will result from the inclusion of other jurisdictions in our contracts. It is anticipated that this will benefit county and non-county agencies through better contract pricing, terms and conditions. Additionally, the proposed technology application will provide entities an improved website, featuring on-line catalog purchasing and the ability to download active contract information. These improvements are expected to promote increased participation in the UAP. DPM will then be able to track and report quantities of goods and services purchased by County and non-county agencies, allowing for improved forecasting of purchases and increased UAP revenue.

UAP contract provisions provide that only those entities that have been approved by the County for participation in the UAP Agreement are eligible to access County contract pricing, terms and conditions. County vendors must obtain a participation number from the approved entity prior to filling any order. If a vendor fails to comply with the required provisions, that vendor may be considered in default of the contract.

- c) Prepare quarterly progress reports on the marketing program in regards to potential Participants and implement changes as necessary to make the program adaptable and marketable.

Department of Procurement Management Response: *Quarterly progress information on the marketing of the UAP Joint Purchases and Entity Revenue Sharing Agreement is available by contacting Celia Hudson, DPM Administrative and Fiscal Division Director.*

- d) Additional measures to promote the UAP and improve controls are as follows:
 - 1. Send follow up promotional letters to municipalities, quasi-governmental and not-for-profit entities eligible to participate with a list of vendors providing goods and services to the County, encouraging them to participate

and take advantage of the County negotiated rates and of the ability to retain 25 percent of the UAP fee.

Department of Procurement Management Response: *DPM will continue to send promotional e-mail notices and/or correspondence to municipalities, quasi-governmental and not-for-profit entities. In addition, outreach efforts will include distribution of information to Dade County League of Cities representatives, the participants at the National Institute of Governmental Purchasing Annual Forum, the Florida Public Purchasing Officials, the National Purchasing Institute Annual Meeting and other professional conferences and association meetings. The application to sign up for the UAP Joint Purchases and Entity Revenue Sharing Agreement will be provided, as well as a current list of DPM established contracts. This information will also be incorporated on the DPM website and referenced in communications to outside agencies.*

2. Send notices to participating municipalities, quasi-governmental and not-for-profit entities, reminding them to submit their quarterly UAP reports to the County, listing business transactions utilizing County contracts. Quarterly reports are due 15 days after the end of the quarter and require reporting by contract number, vendor and purchase volume.

Department of Procurement Management Response: *DPM will continue implementing the notification process of reminding participating entities to forward quarterly UAP reports.*

3. Provide County vendors with a list of registered participating municipalities, quasi-governmental and not-for-profit entities, informing them that Participants are eligible for the two percent deduction from vendor invoices when they utilize DPM established contracts.

Department of Procurement Management Response: *DPM will implement this feature on our website by the first quarter of FY 2005-06.*

4. Include additional language in the Miami-Dade County Joint Purchase and Entity Revenue Sharing Agreement stating that the County will be reimbursed audit expenses if the examination results in a deficiency of greater than 10 percent of the amount due to the County. DPM will consult with the County Attorney's Office to confirm that these reimbursements can be legally charged.

Department of Procurement Management Response: *DPM will follow-up with the County Attorney's Office during the fourth quarter of FY 2004-05 to determine whether this recommendation is feasible.*

5. In addition to remedies outlined in Article 1.24 of the contract, include language in the RFP (Request for Proposal), ITB (Invitation to Bid), RFQ (Request for Quotes), and other contracts that the County would have a right to be reimbursed or deduct UAP and audit fees from the amounts due

to the vendor for failure to comply with the Contract. DPM will consult with the County Attorney's Office to confirm that audit fees can be legally reimbursed.

Department of Procurement Management Response: *DPM will consult with the County Attorney's Office and the County Manager's Office during the fourth quarter of FY 2004-05 to evaluate the implementation of this recommendation.*

5) ADDITIONAL COMMENTS

The aggressive application of the UAP in the first contract cycle (during the Option to Renew of existing contracts) has benefited the County when the vendors agreed to the UAP. With revenues of \$972,749 in the first year, DPM recovered the \$275,286 expense of computer programming required to implement the program, and the County as a whole has benefited by the implementation of the UAP. Going forward several contract cycles and applying the UAP to new contracts, the two percent UAP fee may be offset by vendors increasing their prices similar to the State's experience. In the long run, the mandated UAP fee becomes a cost to the County departments, which is offset by revenue to the DPM.

DPM has indicated that they are planning to introduce a more user friendly web based system as part of their FY 2005-06 budget proposal. In part, this system allows for on-line catalog purchasing with the ability to track and report quantities of goods and services purchased by County and non-County agencies, an electronic specification library for on-line access to active contract documents, and the ability to implement an "Active" status process for outside entities to be specifically named in contracts in addition to accessing Miami-Dade County contract prices and terms. These features are expected, to encourage the third party Participants to use the County contracts. The County would benefit if DPM is able to convince Participating and potential Participant municipalities, quasi-governmental entities and not-for-profit entities to use the UAP.